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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Estados Unidos Mexicanos,

Plaintiff,

vs.

Diamondback Shooting Sports, Inc., an
Arizona corporation; SNG Tactical,
LLC, an Arizona limited liability
company; Loan Prairie, LLC D/B/A
The Hub, an Arizona limited liability
company; Ammo A-Z, LLC, an
Arizona limited liability company;
Sprague's Sports, Inc., an Arizona
corporation,

Defendants.

NO. 4:22-cv-00472-TUC-CKJ

**PLAINTIFF'S MOTION TO STRIKE OR IN THE ALTERNATIVE FOR LEAVE
TO FILE SURREPLY**

Pursuant to LRCiv 7.2, Plaintiff Estados Unidos Mexicanos (“the Government”) respectfully moves the Court for an Order striking the new and improperly raised arguments in Defendants’ Joint Reply Memorandum of Law in Further Support of Defendants’ Joint Motion to Dismiss (“Joint Reply”) (ECF 29). In the alternative, the Government seeks leave to file a surreply to these newly raised arguments, and respectfully requests an extension of time to do so.

ARGUMENT

Defendants’ Joint Reply (ECF 29) contains new legal arguments.

It is settled law that a party waives any issue which is not raised until the reply brief. *See, e.g., Llamas v. Butte Community College Dist.*, 238 F.3d 1123, 1127-1128 (9th Cir. 2001); *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir.1998) (finding issue not raised until reply brief effectively waived); *Faulkner v. Schriro*, 2007 WL 2949053 at *13 (D.Ariz. 2007) (Court will not address new grounds for relief raised for the first time in a reply brief).

By introducing new legal arguments in their Joint Reply, Defendants have deprived the Government of an opportunity to respond. Therefore, the Government moves that the Court strike the arguments raised for the first time in Defendants’ Joint Reply, namely:

1. Defendants’ new legal argument that Arizona choice-of-law principles require the application of U.S. law. (ECF 29, p. 3-5).
2. Defendants’ new legal argument that principles of international comity mandate the application of Arizona law. (ECF 29, p. 5).

3. Defendants' new legal argument that this case does not implicate an extraterritorial application of PLCAA. (ECF 29, p. 7-10).

4. Defendants' new legal argument that the Government lacks *parens patriae* standing to bring its claims. (ECF 29, p. 19-20).

Pursuant to LRCiv 7.2(m), "a motion to strike may be filed...if it seeks to strike any part of a filing or submission on the ground that it is prohibited (or not authorized) by a statute, rule, or court order." It is well established in this District that a court will "not consider new arguments raised in a reply." *AIRFX.com v. Air FX LLC*, 2012 WL 129804, *1 (D. Ariz. Jan. 17, 2012) (citing *Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th Cir.1990)); *see also Sogeti USA LLC v. Scariano*, 606 F. Supp. 2d 1080, 1086 (D. Ariz. 2009) (refusing to address new argument raised "for the first time in the reply"); *Garcia v. Regis Corp.*, 2010 WL 1408825, *2 n.3 (D. Ariz. Apr. 7, 2010). Thus, "where new arguments and new evidence is submitted for the first time in a reply brief, the arguments and evidence may be stricken." *MJG Enterprises, Inc. v. Cloyd*, 2010 WL 3842222, *6 n.1 (D. Ariz. Sept. 27, 2010) (collecting cases); *see also Giunta v. City of Phoenix*, 2008 WL 276355, *2 (D. Ariz. Jan. 29, 2008).

In the alternative, the Government seeks leave to file a surreply for the limited purpose of responding to Defendant's new arguments. Granting leave to file a surreply brief lies in the sound discretion of the Court. *Frank v. Certain Underwriters at Lloyds London Syndicate 4141*, 2011 WL 1770536, *1 (D. Ariz. May 10, 2011). The Government's surreply will

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1 address only the legal arguments, listed above, that Defendants raised for the first time in
2 their responsive brief.

3 Additionally, Plaintiff's counsel, Steve D. Shadowen, is currently engaged as co-lead
4 trial counsel in a five-week trial in *In re HIV Antitrust Litigation*, 3:19-cv-02573 (N.D. Cal).
5 That trial is not scheduled to conclude until June 30, 2023. Almost the entirety of Mr.
6 Shadowen's litigation team in this case is likewise engaged on-site in San Francisco for the
7 ongoing trial.
8

9 In the event the Court grants leave to file a surreply, Plaintiff respectfully requests an
10 extension of time until July 14, 2023 to file its surreply.

11 Counsel has waited until now to file this motion, with the hope of avoiding a request
12 for an extension of this length if the matter in trial settled. It has not done so.
13

14 CONCLUSION

15 For the foregoing reasons, Plaintiff's motion to strike the new arguments made in
16 Defendants' Joint Reply, or, in the alternative, for leave to file a surreply responding to
17 those arguments should be granted.
18

19 DATED this 2nd day of June 2023.

20 DECONCINI MCDONALD YETWIN & LACY, P.C.

21 By: /s/Ryan O'Neal

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CERTIFICATE OF SERVICE

I, Ryan O’Neal, hereby certify that this document was filed with the Clerk of the Court via CM/ECF. Those attorneys who are registered with the Court’s electronic filing systems may access this filing through the Court’s CM/ECF system, and notice of this filing will be sent to these parties by operation of the Court’s electronic filings system.

Dated: June 2, 2023

/s/ Ryan O’Neal

Ryan O’Neal

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